

IN THE HIGH COURT OF TANZANIA

(COMMERCIAL DIVISION)

AT DAR ES SALAAM

MISC. COMMERCIAL CAUSE NO.9 OF 2021

IN THE MATTER OF THE COMPANIES ACT [CAP 212 R.E.2002]

AND

IN THE MATTER OF THE PETITION FOR WINDING UP OF

DSV AIR AND SEA LIMITED PETITIONER

Date of Last Order: 15/06/2021

Date of Ruling: 25/06/2021

RULING

MAGOIGA, J.

The petitioner, DSV AIR AND SEA LIMITED by way of petition made under the provisions of sections 279 (1) (a) (d) and 281 of the Companies Act,[Cap 212 R.E. 2002] supported by an affidavit verifying the winding up petition sworn by Jens H. Lund is praying for this court be pleased to give the following orders, namely:

- i. That DSV Air and Sea Limited be wound up by the court under the provisions of the Companies Act as stated hereinabove;
- ii. That official receiver be appointed by this honourable court for purposes of liquidation ; and
- iii. That the assets of the Company be realized to pay off its debts.



Upon this petition filed in this court, this court ordered and directed that this petition be advertized in Government Gazette and in one issue of Daily News (local newspaper widely circulating in the country). The petitioner in compliance of the court's order and directives, on 30th April, 2021 advertized in Government Gazette No. 18 at page 112 and in Daily Newspaper dated 03rd May, 2021 at page 5 paving way for hearing of the petition.

Up to the time when the petition was called for hearing on 15.06.2021, no objection was filed against the winding up orders sought.


Mr. Juvenalis Ngowi, learned advocate for the petitioner, arguing the petition recited the provisions under which this petition was preferred and adopted the contents of the affidavit of Mr. Jens H. Lund. Mr. Ngowi brief to the point made a brief submission starting with the history of the Company with registration No. 53421 and its current name which was changed from Swift Logistics (T) Limited to DSV Air and Sea Limited and the objects of the company was established as stated in paragraph 5 of the affidavit. According to Mr. Ngowi, the main reason why this petition was preferred was that, the petitioner failed to meet its liabilities as evidenced in annexure DSV-4 which is financial audited accounts in

which shows that the petitioner made a loss of Tshs.877,838,000/=.

Following that state of affairs, Mr. Ngowi went on to submit that on 18th December, 2020, the petitioner passed a special resolution in which its shareholders instructed directors to file winding up petition to court on the reason that the company cannot meet its liabilities and as such cannot continue with its business.

Mr. Ngowi further told the court that the petitioner has complied with the requirement of the law under Rule 99(1) (a) of the Companies Insolvency Rules G.N. 43 of 2005 by advertising in Government Gazette No.18 of 30/04/2021 at page 112 and also in Daily news papers dated 03/05/2021 and further that the petitioner has complied with Rule 102 of the Companies Insolvency Rules by filing a certificate of compliance filed on 8/06/2021.

Lastly Mr. Ngowi implored this court be pleased to grant the orders as prayed in the petition and went further propose the appointment Mr. Ayoub Mtafya, learned advocate as official liquidator to wind up the company.



From the above submissions and affidavit in support of the petition read together with the supported exhibits, without much ado, I am satisfied that the petitioner has made a case for issuance of winding up orders as prayed in the petition for the following reasons: one, no objection was taken after the said petition was filed and subsequently advertised both in the Government Gazette and Daily News paper as demonstrated in this petition; two, the audited accounts of the petitioner suffices to prove that the petitioner is unable to pay off its debts and cannot do business.

From the foregoing, I am, therefore, inclined to grant the winding up orders to the petitioner as prayed in the petition in the following orders:-

1. The petitioner, **DSV AIR AND SEA LIMITED** with certificate of incorporation No.53421 is hereby wound up under the provisions of section 279(1) (d) and (e) and 281 of the Companies Act, 2002;
2. In terms of section 294 of the Companies Act, 2002, **Mr. AYOU MTAFYA** is doth hereby appointed to act as official liquidator of the company for a period of six months within which he shall, subject to the control of the court exercise all the powers enumerated under sections 299, 300,301,302,303,304, and 306 of the Companies Act, 2002.




3. The official liquidator upon realizing all the properties of the company or in his opinion if there is no need of protracting liquidation, and has distributed a final dividend, if any, and adjusted the rights of the contributories and made a final return, if any, to the contributories, shall cause and file in court a report on his accounts for his release according to the provisions of section 307 of the Companies Act, 2002.
4. The winding up order be served to the Registrar of Companies for his necessary actions.
5. No order as to costs is made because there was no objection filed.

It is so ordered and directed.

Dated at Dar es Salaam this 25th day of June, 2021.




S. M. MAGOIGA
JUDGE
25/06/2021